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Letter dated 3 August 2006 from the Acting Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Italy submitted pursuant to resolution 1624 (2005) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Adamantios Th. **Vassilakis**
Acting Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 31 July 2006 from the Permanent Mission of Italy to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

Pursuant to Security Council resolution 1624 (2005), I have the honour to transmit on behalf of my Government the report concerning the steps taken by Italy to implement the resolution (see enclosure).

(*Signed*) Aldo **Mantovani**
Ambassador
Chargé d'Affaires, a.i.

Enclosure

Report from Italy to the Counter-Terrorism Committee regarding the implementation of Security Council resolution 1624 (2005)

Paragraph 1

1.1 What measures does Italy have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

Under Italian criminal law, incitement to commit acts of terrorism is punishable per se or as a form of participation in specific crimes. The Italian Criminal Code contains a general provision on "incitement" to commit intentional crimes against the character of the State, both on a domestic and on an international level. Article 302 of the Italian Criminal Code punishes the incitement of one or more persons: "Whosoever incites any person to commit one of the intentional crimes provided for in Book II, Chapters I and II, Title I, shall be punished, if the incitement is unsuccessful, or if the incitement is successful but the crime is not committed, by a prison sentence of one to eight years. However, the sentence shall not be more than one-half the sentence prescribed for the crime that was incited."

The crimes referred to in Article 302 also include association for the purposes of terrorism and international terrorism, aiding and abetting members of the association (provided for in Articles 270 bis and 270 ter of the Italian Criminal Code); attacks for terrorist purposes (Article 280 of the Italian Criminal Code); and kidnapping for terrorist purposes (Article 289 bis of the Italian Criminal Code).

In general, incitement is punishable only if the incited crime is not committed. If instead it is committed, Italian law views the instigator as having acted in concert with the person instigated to perpetrate the (attempted or committed) crime. In this case, the laws governing participation in the commission of that specific crime shall apply.

To apply the "incitement" provisions in the Italian Criminal Code, case law has rendered an interpretation that seeks to be consistent with the constitutional principle of freedom of communication (Article 21 of the Constitution). The Constitutional Court has clarified that incitement shall be punishable only if it involves a "genuine risk" of inducing someone to commit the specific crimes covered by Article 302. Therefore, in the opinion of the Constitutional Court, incitement can be both lawful — if it falls within the constitutional right to freely express thoughts — and unlawful — if, as a result of a criminal proceeding, the conduct is deemed to have induced the incited person to commit a specific crime.

Law No. 438 of 15 December 2001 introduced two new crimes: association for the purposes of terrorism and international terrorism and aiding and abetting members of the terrorist association. Under this law, two types of conduct can be punished: (i) promoting, setting up, organizing, heading or funding associations whose intent is to commit acts of violence for the purposes of terrorism and international terrorism; (ii) supporting any one of the persons who participate in terrorist associations by harbouring them or providing them with food, hospitality, and means of transportation or communication.

Both these crimes are covered by a criminal association measure that is widely invoked by Italian criminal law. Under this measure, the association member's typical conduct — i.e., his or her *moral* (e.g. inducing or reinforcing the criminal intent) and *material* support (by providing the association with the necessary resources to carry out its activities) — can be punished regardless of whether the criminal acts for which the association was established were actually carried out. This lowers the burden of proof and allows the prosecution of association members prior to the association's actual realization of its ultimate plans.

There are no other exceptions in Italian law for the prosecution of the above-mentioned crimes. No exceptions on liability are envisaged when the conduct described above is performed by a representative of a religious institution or voluntary organization. The only relevant measure applies to prosecution in general: under Article 129 of the implementing provisions of the Italian Criminal Code, when a Catholic priest or cleric is prosecuted, the public prosecutor has to inform the Ordinary of the clergyman's diocese.

Decree-law 144 was enacted on 27 July 2005, and was later converted into law 155 of 31 July 2005, containing "Urgent measures for countering international terrorism".

This law introduces new tools to successfully fight terrorism, including:

- article 270 — quater of the criminal code (on recruiting for terrorist activities, including international terrorism);
- article 270 — quinquies of the criminal code (on training in terrorist activities, including international terrorism);
- article 270 — sexies of the criminal code (Terrorism-inspired behaviour).

Law 155 of 31 July 2005 amended section 414 of the criminal code, increasing the sentence when the solicitation or instigation to commit a crime involves terrorist acts. In the area of crime prevention, section 3 of the same law introduced new provisions that allow the deporting of any foreign national "against whom there are well-grounded reasons to believe that his/her stay on the national territory might facilitate in any way terrorist groups or activities, also at the international level".

At present no other legislative initiatives are under review to prevent incitement to commit terrorist acts.

1.2 What measures does Italy take to deny safe haven to any person with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

Overview of Italian asylum law

Article 10 of the Italian Constitution recognizes a foreigner's right to asylum on the territory of the Italian Republic if, in the country of origin, he or she is denied the exercise of democratic liberties provided for by the Italian Constitution. It also requires that legislation be drafted to implement the exact terms for granting asylum.

Under Italian law, foreigners seeking asylum in Italy belong to one of two general categories:

(a) Foreigners possibly entitled to refugee status under the Geneva Convention of 28 July 1951 and the 1967 New York Protocol, and persons within the mandate of the United Nations High Commissioner for Refugees;

(b) Foreigners who are not included in these two groups.

For category a, Article 1 *et sequentes* of Law 39 of 28 February 1990, amended by Law 189 of 30 July 2002, and its implementing measures provide for administrative proceedings to determine the granting of refugee status. The proceedings consist of three phases. In the first phase, the border police verify whether there are any impediments to refugee status. In the second phase, the local police authority holds a hearing with the applicant and collects information either directly from the applicant or ex officio. In the third phase, a local commission — made up of Interior Ministry officials, police officers, local government representatives, and a UNHCR delegate — renders a decision on the asylum application. Since 1998, applicants who have been denied can appeal before an ordinary judge. Previously appeals had to be filed before an administrative judge.

For category b, although various bills have been submitted to Parliament, no implementing law has been enacted so far. The Joint Divisions of the Court of Cassation, by judgement 4674 of 26 May 1997, have recognized that "pursuant to Article 10, paragraph 3, of the Constitution, foreigners, who are not allowed to exercise their democratic liberties, are entitled to asylum, even if a law that specifies the terms for exercising and enjoying this right is lacking". Under this decision, the ordinary judge is competent for disputes over the granting of asylum.

With respect to information exchange on asylum-seekers, a distinction between the two aforementioned categories is necessary.

For asylum-seekers that fall under the Geneva Convention on refugees and the New York Protocol, the police authorities have the legal power to gather information on the asylum-seeker, also ex officio, to determine whether there are impediments to approval of the application. Pursuant to Article 1, paragraph 4, letter (d), of Law 39/90, the following facts would be impediments: an asylum-seeker has been convicted in Italy of serious crimes including terrorism; he or she constitutes a danger to the security of the State; he or she is a member of mafia-type criminal association involved in drug trafficking or a member of a terrorist association. The information collected might also concern the participation of the asylum-seeker in terrorist organizations or the perpetration of acts of terrorism.

As to possible information exchanges with other countries, the police authorities, pursuant to Law 121 of 1 April 1981, have the power to gather and classify data and information on public order and security also with a view to maintaining and fostering international relations. In ratifying the Schengen Agreements, moreover, Italy has adopted the Schengen Information System, a database for information exchange between member States. All the collected data are available at the Data Processing Centre of the Department for Public Security. Law 675 of 31 December 1996 on the Protection of Personal Data provides that the rules on data processing shall not fully apply to the information collected in the Data Processing Centre, on the basis of Italy's accession to the Schengen Agreement.

Under Italian law information exchange is possible, also at the international level, provided that its purpose is to prevent and prosecute criminal offences or to

address threats to national security. The Authority for the Protection of Personal Data (*Garante per la protezione dei dati personali*) is in charge of processing data collected in the Data Processing Centre.

There are, however, stricter guarantees for information drawn from asylum applications. Article 38 of the Schengen Agreement (14 June 1985) establishes that information exchange between member States is allowed only for the specific purposes of granting or denying asylum applications. Articles 14 and 15 of the Dublin Convention (15 June 1990) set strict conditions for information exchange, confirmed also by European Council Regulation 2725/2000 on the Eurodac system.

Although information exchange about asylum-seekers is not forbidden by Italian legislation, it can be restricted by Italy's adhesion to international conventions or agreements. However, neither law courts nor the Authority for the Protection of Personal Data have yet rendered any decision on information specifically relating to asylum applications.

In the case of asylum-seekers who are not protected by the Geneva Convention, proceedings to grant asylum are carried out before an ordinary civil judge under case law as per point (1). According to the Code of Civil Procedure, the judge can gather information from the public administration ex officio, but he/she is by no means obliged to transmit the information to other authorities. However, should the judge believe that a crime has been committed, he/she is compelled to report to the public prosecutor. Under the Code of Civil Procedure, the public prosecutor must take part in proceedings on the status of persons, including those for the granting of asylum. Since the public prosecutor is in charge of instituting criminal proceedings, he/she can initiate a criminal investigation on the basis of the information collected in the proceedings. In this framework, the rules on international cooperation in criminal matters, including the exchange of documents and information, shall apply.

Article 1, paragraph 4, letter (d), of Law No. 39/90 expressly provides that, on the basis of the information collected by the police authority, asylum-seekers convicted in Italy of serious crimes including terrorism, representing a danger to the security of the State, or participating in mafia-type criminal associations for the purposes of drug trafficking or terrorist associations, may be barred from crossing the border or, in any case, denied asylum.

According to Italian case law, an asylum application can be denied if the applicant committed serious crimes contrary to the principles of the Italian Constitution, including terrorist crimes. In such cases, the same principles generally used in extradition proceedings for political crimes shall apply. Extradition can be approved if the seriousness of the crime prevails over the political motivation for the asylum application.

In asylum proceedings, in the phases chaired by a judge, judicial cooperation can be allowed.

Paragraph 2

1.3 How does Italy cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by

combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?

Within the European Union, Italy helped to draft the "Hague Programme on Strengthening the Area of Freedom, Security and Justice in the European Union", adopted in November 2004. The Hague programme contains important policy guidelines and identifies measures that the EU and its member States should take to fight terrorism and its radicalization. The Programme underlines the need to tackle the terrorism-related threats posed by illegal immigration and provides for enhanced EU-wide operational cooperation among law enforcement agencies and intelligence services, through information exchange. The EU is paying special attention to strengthening third countries' capacity to control their own borders.

Border Police cooperation

Italy cooperates extensively with other EU member States in identifying and adopting measures to counter illegal immigration, also within domestic borders.

Below is a list of the most significant actions:

- Cooperation between the Police and Customs Cooperation Centres and France, Switzerland and Austria;
- "High Impact" trilateral operations between Italy, France and Spain, and between Italy, Austria, Germany, and Slovenia;
- Joint operations with Greece;
- Joint operations with Germany, France, the United Kingdom, and Spain;
- **Cooperation with the European Agency for External Borders (Frontex)**, particularly for the 2006 Turin Olympic Games and the 2006 German world football cup;
- **Joint control services** at extra-Schengen borders, with mixed patrols at the Slovenian border and national patrols at the Swiss border;
- **Personnel training**. Since 2004, training has been in place for the whole staff of the Central Directorate for Immigration and Border Police. In 2005 alone, nine personnel training courses were held at the Institutes in Cesena and Abbasanta;
- A considerable increase in staff to cover the many border crossings guarded by the Police, Carabinieri and Guardia di Finanza. The police have been placed in charge of the offices of the air border in Treviso, Forlì and Lamezia Terme, of the sea and air border in Pescara, and of the sea border in Salerno and Gioia Tauro.

The police were assigned these offices based on the volume of traffic and on risk analyses. The purpose of this reassignment is to streamline inspection of individuals crossing extra-Schengen sea and air borders. It must be underlined that:

- For the **management and coordination of the operational sector**, circulars and notes reporting on meetings with area leaders are regularly sent to the departments. These meetings have been established to optimize border control and border surveillance procedures, in accordance with the Schengen "acquis";

- The police maintain permanent relations with other agencies operating at borders, primarily the Ministry of Infrastructures and Transport, the Ministry of Foreign Affairs, the Italian Civil Aviation Authority, and Customs;
- Targeted anti-immigration services have been set up, with the support of mobile units and local police forces, to **strengthen sea borders** at major Adriatic ports where there has been illegal traffic and at some Tyrrhenian ports;
- For laws on the **border control of individuals**, Italy follows the European Commission's "Schengen borders code", a practical manual for border guards, and Directive 2004/82 of 29 April 2004, which requires air carriers to communicate passenger data;
- With the help of EU funding, Border Offices have acquired high tech equipment, particularly the "Mobix" system, false bottom detectors, heartbeat detectors, carbon dioxide detectors, nightscopes, and multisensor vehicles;
- The current integrated border security system has been implemented in part through state-of-the-art technological equipment that is sensitive to the modus operandi of transborder crime and its possible evolution.

The key agencies in the **fight against document counterfeiting** are the Central Directorate for Immigration and the border police. The border police are equipped with the SIDAF system, a highly efficient technological apparatus to fight document fraud. Its training activities include sending specialists to the various border stations for on-the-job training.

Italy's established bilateral and multilateral (especially G-8) working relations have enabled it to produce best practices papers on international and domestic legal frameworks for border management, preventing stolen and lost travel documents from being used by terrorists, and document forgery. Italy has also investigated how intelligence can be effectively exchanged in order to combat transnational threats without violating personal privacy.

Paragraph 3

1.4 What international efforts is Italy participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?

Italy recognizes the importance of dialogue between cultures and religions as an effective means of preventing extremism and intolerance, both in the countries of origin and within the foreign communities residing in our country. To deny space for fundamentalist propaganda and the recruitment of terrorists, Italy plays a leading role in enhancing dialogue and broadening understanding among cultures.

Italy participates intensively in the activities of the Barcelona Process and helped to draft the Euro-Mediterranean Code of Conduct on countering Terrorism, adopted by the Euro-Mediterranean partners at the 10th anniversary Summit of Heads of State and Government.

In April 2005 the Anna Lindh Euro-Mediterranean Foundation for the Dialogue between Cultures was created. The Foundation is the first common institution jointly established and financed by all 35 members of the Euro-

Mediterranean Partnership. It seeks to promote dialogue between cultures and enhance the effectiveness of the Barcelona Process through intellectual, cultural and civil society exchange.

Italy welcomed the commitment made by the EU at the Salzburg "Gymnich" meeting (10-11 March 2006) to develop a common public diplomacy that would provide public opinion, the press and other institutions with a better understanding of the values and principles shared by the Euromed cultures.

In December 2005, the European Council adopted the EU Strategy for combating radicalization and recruitment to terrorism, together with a detailed Action Plan, and began to implement it during the first semester of 2006. The Strategy, to which Italy contributed, focuses on the need for an EU media communication strategy that can explain European values and methods, as a means of addressing factors underlying the radicalization and the recruitment to terrorism.

Italy also supports the Alliance of Civilizations, launched by the Secretary-General of the United Nations and co-sponsored by Spain and Turkey.

In the framework of the partnership of the G-8 nations and the Broader Middle East and North Africa region, Italy, Turkey, and Yemen are leading the activities of the Democracy Assistance Dialogue (DAD). Italy allocated 500,000 euros in 2005 and 2,050,000 euros in 2006 for projects that promote democratic values and practices, in a spirit of ownership of the reform processes, partnership and dialogue.

At the national level, a Mediterranean Observatory was established in Rome in 2004 to foster dialogue between both shores of the Mediterranean. The Observatory organizes special events, conferences, and, in the current year, put together a panel discussion dedicated to "the new thinkers of Islam".

1.5 What steps is Italy taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

There is a high level of international cooperation in the fight against incitement of and apology for terrorism and the recruitment of terrorists, issues closely followed by the EU and the main multilateral cooperation forums.

The issues of radicalization and recruitment are prioritized in the EU Action Plan to Combat Terrorism. The EU, realizing that one of the main goals of a counter-terrorism strategy must be the prevention of membership in terrorist organizations, is trying to address the underlying causes.

To this end, in December 2005 the EU Council adopted a strategy to fight radicalization and recruitment. In recent years, there have been various expert meetings to exchange national experiences and identify good practices. During the first semester of 2006, an ad hoc seminar was held in Trier.

At a more operational level, Europol organized a workshop within the Antiterrorist Task Force (CTTF2) to exchange information on recruiters and recruits, and on the use of the Internet for terrorist purposes. It is currently developing a project to monitor Internet sites used by Islamic terrorist groups for propaganda, proselytism and training.

Starting in 2005, the G-8 (particularly during the Russian presidency) has addressed the radicalization and recruitment of terrorists, with a focus on the

problems of integration into society, how young people perceive Islam, and measures to counter incitement to commit terrorist acts.

Paragraph 4

1.6 What is Italy doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all of its obligations under international law in particular international human rights law, refugee law and humanitarian law?

Italy signed and ratified the four Geneva Conventions of 12 August 1949 by law 1739 of 27 October 1951. Italy also signed and ratified the two 1977 Protocols to the Geneva Conventions by law 762 of 11 December 1985.

All Italian legislation must comply with the European Union Treaty and the Italian Constitution, which set high, effective safeguards for human rights and humanitarian law, and prevent all forms of discrimination, also in the fight against terrorism.